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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,224	02/05/2002	Tina Meinertz Andersen	6248.200-US	7678

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EXAMINER

FOSTER, JIMMY G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED

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TECHNOLOGY CENTER R3700

Office Action Summary

Application No.

10/068,224

Applicant(s)

ANDERSEN ET AL.

Examiner

Jimmy G Foster

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24-November 2003.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1-4, 21, 22 and 37-42 is/are allowed.
6) ☒ Claim(s) 5-20 and 23-36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Art Unit: 3728

1. 1. Claims 1-4, 21, 22 and 37-42 are allowable.

2. Claims 5-20 and 23-36 rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. More specifically, claim 5 calls for the container and an atmosphere as being part of a composition, instead of containing or surrounding a composition. This is not supported anywhere in the original disclosure. The originally disclosed composition includes a meiosis activating component and additives. It does not include a container and an atmosphere. However, the composition is stored in an atmosphere within a container.

2. Claims 5-20 and 23-36 rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, it does not makes any sense to claim an atmosphere as part of a composition since an atmosphere by its definition is a gas surrounding a body.

It is noted that claim 5 introduces three compositions. In the first line of each of claims 6-20 and 23-36, it is unclear which composition is being referred to by "The composition"; is it 1) the one introduced in line 1

of claim 5, 2) the first one introduced in line 2 of claim 5, or 3) the solid composition of line 2 of claim 5?

In claim 26, there is no antecedent basis for "the composition contained in the container".

In Claim 29, line 3, the limitation, "a composition" appears to be an indefinite double recitation of one of the compositions introduced in claim 5, making it unclear how many compositions are intended to be claimed in claim 29.

The use of the term "composition" in the claims 5-20 and 23-36 merely to refer to parts of the invention is repugnant to the typical use of the term which Applicant employs in the specification to refer to a mixture of chemical elements, making it unclear what structure the claims are intended to cover.

It is unclear how the container structurally relates to the atmosphere in claim 5.

3. Claims 5-20 and 23-26, insofar as understood, would be allowable if amended to overcome the rejections under 35 U.S.C. 112.

4. Applicant's arguments have been considered with respect to the rejected claims but are deemed to be moot in view of the new grounds of rejection.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
17 February 2004